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Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 186.

THE UNITED STATES, APPELLANT,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, GEORGE LOOMIS ET ALS., APPELLEES.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

ARGUMENT FOR THE DEFENDANT GEORGE LOOMIS.

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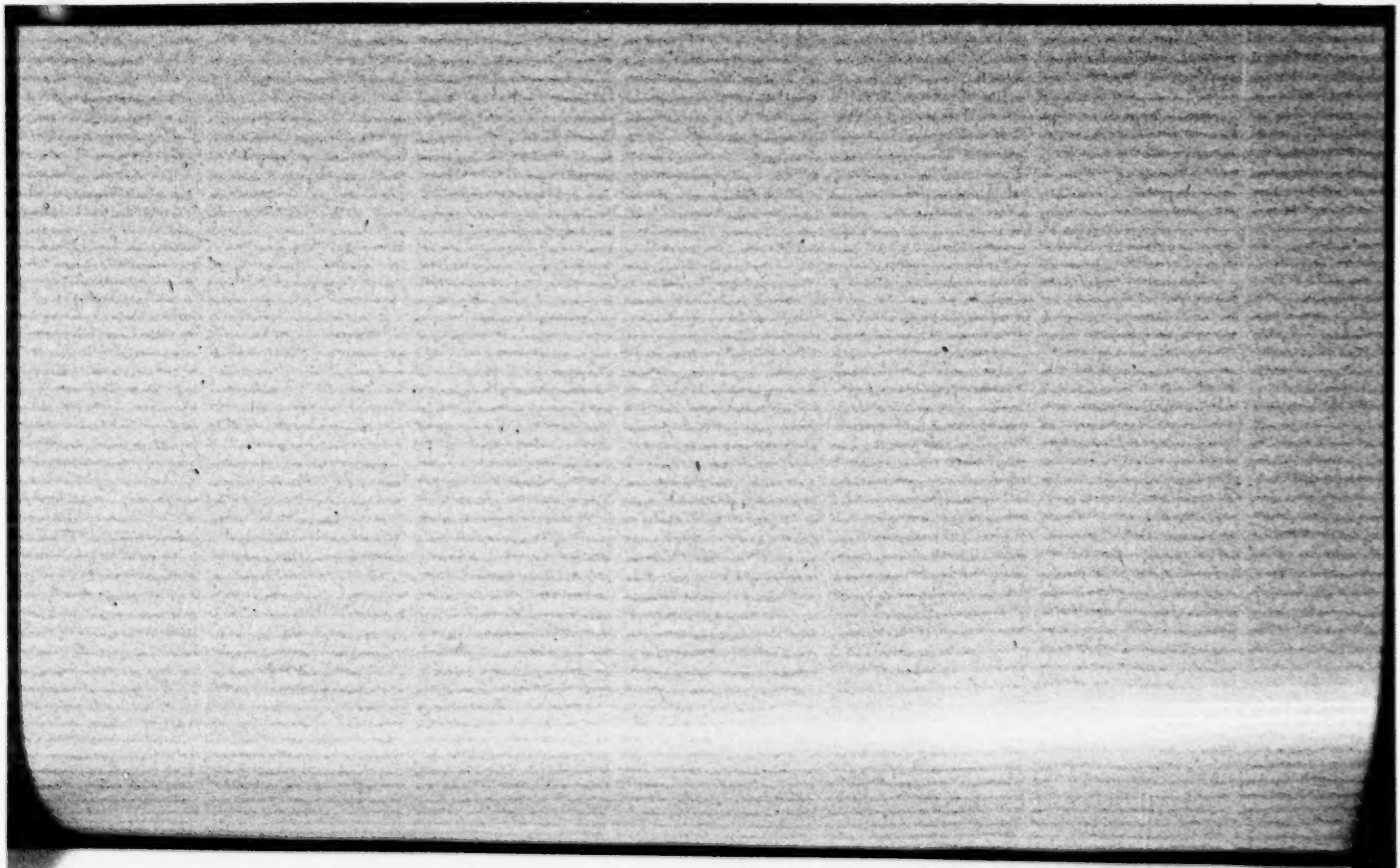

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ARGUMENT FOR THE DEFENDANT GEORGE LOOMIS.

At the trial of this case the defendant George Loomis, in answer to the bill of complaint of the United States, alleged that he was a *bona fide* purchaser of the lands claimed by him as trustee for the Pacific Coast Oil Company, from the Southern Pacific Railroad Company, and as such purchaser was entitled to purchase the lands from the United States, and to a patent therefor, under Section 5, of an Act of Congress approved March 3, 1887. (24 Stat., 556.)

The final decree of the United States Circuit Court sustained this defence and affirmed the right of the defendant to purchase the lands from the United States under the Act of March 3, 1887, as claimed. (Record, p. 50.)

The United States Circuit Court of Appeals, for the Ninth Circuit, affirmed this decree and held that the defendant, Loomis, and others whose claims were of the same class and character, were *bona fide* purchasers from the railroad company, and as such were entitled to make payments to the United States for the land and secure a patent therefor as provided by law. (Record, pp. 669, 672.)

Before the trial court the defendant introduced testimony in support of his claim that the purchase of the lands from the railroad company was made in good faith.

D. G. Scofield, who had been Vice-President of the Pacific Coast Oil Company since 1884, testified that the lands were purchased and paid for by the said company in good faith, and that said company entered into possession of them under the contracts of purchase and had paid the taxes levied on them since the date of the purchase, and had expended $150,000 to $160,000 in improvements upon them.

The Southern Pacific Railroad Company represented to the Pacific Coast Oil Company, and to George Loomis, that it was the owner of the lands at the time the contracts and deeds were entered into and executed, and the purchasers relied on those representations in making the purchase, and also upon the advice of their attorney, who advised them that the titles were good in the railroad company.

The purchasers had no notice of any contest being in existence between the government and the Southern Pacific Railroad Company with reference to these lands at the time of the purchase.

The several deeds and contracts relating to the lands purchased by the defendant Loomis are attached to this testimony as exhibits, and they show that two of the same were made before this action was commenced, and the others were made after the commencement of the action. (Record, pp. 190 to 307.)

The testimony of the witness Scofield is corroborated by that of the witness Jerome Madden, who was the Land Commissioner for the Southern Pacific Railroad Company who made the sales of the lands to Loomis, who testified that he considered that every person who bought from the railroad company bought in absolute good faith, and that he bought some of the unpatented lands himself. (Record, pp. 639, 640.)

It is shown by the testimony of the witness Madden that in the year 1883 the railroad company commenced selling these unpatented lands to the people and that they bought in good faith, and paid in good faith. (Record, pp. 638, 639, 640, 641.)

There are but three of the assignments of error in the decree appealed from which it is deemed necessary to discuss, viz: In the fourth (4) assignment of error it is claimed that the court erred in adjudging that the defendants who purchased lands from said railroad company subsequent to November 22, 1889, the date of the commencement of the suit of the United States *vs.* the Southern Pacific Railroad Company which was finally decided by the Supreme Court on December 12, 1892, and is reported in 146 U. S., 615, were not charged with notice thereby of the right and title and claim of the United States to the lands, and in consequence of such notice were not *bona fide* purchasers.

In the sixth (6) assignment of error it is claimed that the court erred in refusing to adjudge that those defendants who purchased unpatented lands from the railroad company by executory contracts, where only part of the purchase money was paid, and where the contract contained a provision that the purchase money should be refunded in case the company did not secure a patent for the lands, were not thereby charged with notice of the right and title of the United States to the lands.

In the seventh (7) assignment of error it is claimed that the court erred in adjudging that any defendant who purchased unpatented land on a contract with the railroad company and agreed to pay for the land in installments is a "purchaser" within the meaning of the Act of March 3, 1887, or the Act of March 2, 1896, it appearing that the procurement of the patent from the United States was a condition precedent to said sale.

The fourth (4) assignment of error is that the defendants are not *bona fide* purchasers because they were charged with notice of the suit commenced by the United States on November 22, 1889, to recover the lands, and they purchased them after the commencement of that suit.

As a general proposition of law, a *bona fide* purchaser is one who purchases in good faith, without notice, and for a valuable consideration, and if he purchases *lis pendens*, he will be bound by the judgment in the pending action, but the defendants here are not claiming the title to the land from the railroad company under and by virtue of the purchase, but are asserting a right to purchase the same from the United States under the provisions of an independent remedial act of Congress, which, they contend, applies to purchasers *in good faith for value*, and that the question of notice of defect in the title at the time of purchase does not, from the special circumstances of the case, enter into the transactions, because the meaning of the words *bona fide* purchaser, as used in this Act of Congress of March 3, 1887, and as used on other transactions of like character, is not the same.

The right of these defendants to purchase the lands bought by them from the railroad company is based upon Section 5, of the Act of Congress of March 3, 1887, which is as follows:

"Sec. 5. That where any said company shall have sold to citizens of the United States, or to persons who have

declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections described in the grant and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the *bona fide* purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents shall issue therefor to the said *bona fide* purchaser, his heirs or assigns." (24 Stat., p. 556.)

The first official construction of the Act of March 3, 1887, is to be found in the opinion of Attorney-General Garland, addressed to the Secretary of the Interior on November 17, 1887, in which the Attorney-General said:

"The whole scope of the law from the second to the sixth section, inclusive, is remedial. Its intent is to relieve from loss settlers and *bona fide* purchasers, who, through the erroneous or wrongful disposition of the lands in the grants by the officers of the government, or by the railroads, have lost their rights or acquired equities, which in justice should be recognized. That the sections sold by the railroad company shall have been approved, is not required by the fifth section, nor that it shall have been patented. That the land shall have been approved to the company, before the purchasers shall be entitled to the benefit of the sixth section, is not required. By the words of the act, the only requisite established, to entitle those wronged to its benefit, is, that they shall be citizens of the United States, or have declared their intention to become citizens; that it shall have been sold to them by a railroad company as part of its grant; that the land shall not have been conveyed to or for the use of the company; that the lands shall be of the numbered sections prescribed in the grant, and coterminous with constructed parts of the road; and that the purchasers shall have bought in good faith. It was not intended to limit the redress to cases in which the railroad could rightfully have sold the lands. The

whole remedial part of the law was passed with a recognition of the fact that the railroad companies had sold lands to which they had no just claim. The fifth section expressly refers to such lands as had been sold, which had not been conveyed 'to or for the use of such companies.' It is not required that the sale by the railroad companies shall have been made on its part in good faith, but only that the purchaser shall have bought in good faith. That it was sold under a claim of grant to another in good faith is the ground of his equity. In order that the remedy may be adequate to redress the wrong, the word 'grant,' in the fifth section must be construed to include, as it does in the preceding sections of the act, both primary and indemnity limits." (6 Land Decisions, Int. Dept., 272.)

It will be observed that the Attorney-General correctly held this statute to be remedial in character, and it is an elementary rule of law that statutes of this character are to be construed liberally for the suppression of the mischief and the advancement of the remedy. (American and English Encyclopedia of Law, 1st Edition, Vol. 23, p. 414, and cases cited.)

It was also said by the Attorney-General that it is not required that the sale by the railroad company shall have been made on its part in good faith, but only that the purchaser shall have bought in good faith, which fact constituted the ground of his equity. The whole right of the purchaser from the railroad company to purchase from the government under this section of the Act of 1887, is here said to be based upon the good faith of the purchase from the company, and the question of notice of defect in the title is ignored as immaterial.

This construction has been the rule of action of the Land Department in the execution of this act from the outset. In the case of the United States *vs.* Winona and St. Peter Railroad Company, it was sought to apply a narrow rule of construction to this act by urging that one who had

notice was not a *bona fide* purchaser, but this court declined to accept that view of the matter, and one of the unanswerable reasons assigned by the court for its action was, that *bona fide* purchasers, in the technical legal acceptation of those words, were already fully protected by the law of the land and did not require the aid of this act to maintain their legal rights; and hence, the Act of March 3, 1887, must have been intended to extend relief to such purchasers as had bought railroad lands in good faith, for a valuable consideration, although they were not technically *bona fide* purchasers.

In that case this court said:

"It is true the term used here is '*bona fide* purchaser' but it is a *bona fide* purchaser from the company, and the description given of the lands, as not conveyed and 'for any reason excepted from the operation of the grant,' indicates that the fact of notice of defect of title was not to be considered fatal to the right. Congress attempted to protect an honest transaction between a purchaser and a railroad company even in the absence of a certification or patent. These being the provisions of the Act of 1887, the Act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest sense a '*bona fide* purchaser,' has nevertheless purchased in good faith from the railroad company." (165 U. S., p. 463.)

This decision seems to be conclusive upon the question of notice.

The sixth (6) assignment of error is that the court erred in refusing to adjudge that the defendants who purchased unpatented lands by executory contracts, where only part of the purchase money was paid, and where the contract provided that the purchase money should be refunded in case the company did not secure a patent for the land,

were not thereby charged with notice of the "right and title of the United States to said lands."

In answer to this point it is only necessary to say that at the time Mr. Loomis purchased these lands the railroad company claimed an equitable right to those in the indemnity limits which had been selected in lieu of lands lost in the granted limits, and it claimed the lands in the granted limits of the road as lands *in place* under the terms of a present grant by Congress, which took effect on those lands upon the filing of the map of definite location of the road in the General Land Office. The parties to the purchase knew that the lands had not been patented and that the equitable right was in the company, and the legal title was in the United States, and would remain there in trust for the benefit of the company, until the patents issued; but as it was possible that the lands might be excepted out of the grant for some of the causes specified in the granting act, or that the Secretary of the Interior in the exercise of his discretion might cause the patenting of other indemnity lands which might satisfy the deficiencies in the granted limits in full, without recourse to the lands which had been purchased, the condition for the return of the purchase money was inserted in the contracts as a plain and fair business proposition. If the purchasers knew at that time that the legal title to the lands was in the United States, they believed that it was held in trust for the benefit of the company and would be ultimately conveyed to the company, and this fact does not militate against their good faith in buying the lands, and notice of such a condition of title was not material as in any wise affecting their *status* as good faith purchasers under this act, for it is immaterial whether they knew that the title was then in the United States or not, and the foregoing argument on the question of notice applies with full force to this exception.

It is clear that at the time Mr. Loomis purchased these lands he believed that the *right to the title* was in the railroad company, for he was so advised by counsel, and at that time the decisions of the United States Circuit Court for the Southern District of California in the cases of United States *vs.* Colton Marble and Lime Company, and the Southern Pacific Railroad Company, rendered by two of the ablest jurists that ever occupied the bench in California, stood unreversed in favor of the right of the railroad company to these lands. (146 U. S., 615.)

In the seventh (7) assignment of error it is claimed that the court erred in adjudging that a defendant who purchased lands on a contract with the railroad company, and agreed to pay for the land in installments was a "purchaser," within the meaning of the Act of March 3, 1887, or the Act of March 2, 1896, it appearing that the procurement of the patent from the United States was a condition precedent to said sale.

It is claimed on behalf of the defendants that the word "purchaser," as used in the 5th Section of the Act of 1887, was used in the common and ordinary understanding of the word in this remedial legislation, and that it applies, and was intended to apply to all parties who held the lands under contracts of purchase and are commonly termed purchasers.

The Act of March 3, 1887, and the Act of February 12, 1896, and the Act of March 2, 1896, are all *in pari materia*, and were all intended by Congress to afford new remedies and relief to citizens who had bought lands from railroad companies, in good faith for value, which the companies had no right to sell.

The Act of February 12, 1896, is an amendment to ~~the Act of~~ Section 4, of the Act of March 3, 1887, and the proviso thereof is as follows:

"*Provided further*, That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the government a sum equal to the difference between the portion of the purchase price so paid and the government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser." (29 Stat., 6.)

It will be observed that the word "purchaser" is used in this amendment to the Act of March 3, 1887, to describe one who has not paid but part of the purchase money.

The 3d Section of the Act of March 2, 1896, expressly refers to *bona fide* purchasers as those claiming by "deed or contract, or otherwise." (29 Stat., p. 42.)

In the case of United States *vs.* Freeman, this court said:

"The correct rule of interpretation is, that, if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia*, are to be taken together as if they were one law. (Doug., 30; 2d Term Rep., 387, 586; 4 M. and Selw., 210.) If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute. (Lord Raym., 1028.) And if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." (3 Howard, p. 563.)

The remedial purposes which prompted the enactment of the Act of March 3, 1887, made it absolutely necessary that the word "purchaser," should be broadly and liberally construed in order to afford relief to all citizens whose claims fell within the mischief complained of, and if the scope and operation of the act was confined to those persons

only, who had paid for the lands in full, and held deeds to the lands from the railroad companies, the act would be of little benefit to the great mass of the purchasers of the unpatented lands, and in fact its operation as a remedial statute would be substantially valueless.

The legislative construction placed upon the word "purchaser" by the subsequent acts of Congress leaves no doubt that the term was used in the broad sense in which it is used in the every day transactions of men, and not in a narrow and technical sense, and the later acts are clearly *in pari materia* with the Act of March 3, 1887, and show clearly that all who bought in good faith for value, whether they paid in full or not, and whether they held under deeds or contracts were "purchasers," within the intention and meaning of this legislation.

This is the construction placed upon the matter by the Land Department. (Case of John H. Barton *et al.*, 26 Land Decisions, p. 489.)

Admitting for the purposes of the argument that the sale of the land was a sale upon condition precedent, it was nevertheless a sale and purchase within the meaning of the 5th Section of the remedial Act of March 3, 1887, and that statute applied to lands which were "for any reason excepted from the operations of the grant to said company," which had been bought by purchasers in good faith for value. Congress knew at the time of the passage of the act that the railroad companies had no title to these unpatented lands and had no power or authority in law to convey a good title to any purchaser, and that all sales of unpatented lands must necessarily have been conditional sales, for no other kind of a sale was possible under the existing conditions. It is impossible, therefore, to subject this class of purchasers to the rigid rules of law which apply to ordinary purchases of real property and give any

force or effect to the legislation passed for their benefit and relief.

The fact that the purchasers did not pay all of the purchase money to the vendor is not material, because when this court decided that the lands were excepted from the railroad grant it become impossible for the company to make them a title to the purchased lands, and they were not obliged by law to complete the payments, but this did not in any manner militate against the good faith in which the original purchase was made, or affect their status as purchasers under the Act of 1887.

Respectfully submitted,

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